

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID LAWRENCE JOHNSTON,
Plaintiff,
vs.
SPOKANE COUNTY,
Defendant.

NO. CV-05-5037-AAM

ORDER DISMISSING FIRST AMENDED
COMPLAINT WITHOUT PREJUDICE

1915(g)

BEFORE THE COURT is plaintiff's First Amended Complaint filed May 19, 2005 (Ct. Rec. 8), in response to the Order to Amend or Voluntarily Dismiss filed May 9, 2005 (Ct. Rec. 7). Because an amended complaint supersedes the original, all grounds not alleged in the amended complaint are waived. *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990). Plaintiff, a prisoner at the Washington State Penitentiary, names only defendant Spokane County in the First Amended Complaint. All other defendants have been terminated.

Plaintiff complains he was falsely imprisoned based on an unconstitutional conviction. He contends policy makers of Spokane County failed to properly train themselves regarding state laws which resulted in the alleged violation of plaintiff's due process rights under the Fifth and Fourteenth Amendments. He seeks monetary damages, as well as declaratory and injunctive relief.

1 Again, to recover damages in an action brought under 42 U.S.C. §
2 1983 for an allegedly unconstitutional conviction or imprisonment, or
3 for "other harm caused by actions whose unlawfulness would render a
4 conviction or sentence invalid," a prisoner must show that the
5 conviction or sentence has been "reversed on direct appeal, expunged
6 by executive order, declared invalid by a state tribunal authorized to
7 make such a determination, or called into question by a federal
8 court's issuance of a writ of habeas corpus." *Heck v. Humphrey* 512
9 U.S. 477, 487 (1994). Here, Mr. Johnston makes no showing his
10 conviction has been set aside or otherwise invalidated. Accordingly,
11 his claims are not presently cognizable under section 1983. *Id.*

12 Although granted the opportunity to do so, plaintiff has failed
13 to amend his complaint to state a claim upon which relief may be
14 granted. Accordingly, **IT IS ORDERED** the First Amended Complaint is
15 **DISMISSED WITHOUT PREJUDICE** under 28 U.S.C. §§ 1915(e)(2) and
16 1915A(b)(1).

17 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a
18 prisoner who brings three or more civil actions or appeals which are
19 dismissed as frivolous or for failure to state a claim will be
20 precluded from bringing any other civil action or appeal *in forma*
21 *pauperis* "unless the prisoner is under imminent danger of serious
22 physical injury." 28 U.S.C. § 1915(g). Plaintiff is advised to read
23 the new statutory provisions under 28 U.S.C. § 1915. This dismissal
24 of plaintiff's complaint may count as one of the three dismissals
25 allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to
26 file future claims.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order, forward a copy to plaintiff at his last known address, enter judgment, and close the file. The District Court Executive is further directed to forward a copy of this Order to the Office of the Attorney General of Washington, Criminal Justice Division.

DATED this 12th day of July 2005.

S/ Alan A. McDonald
ALAN A. McDONALD
SENIOR UNITED STATES DISTRICT JUDGE